

# Body Politics

**A** PIZZA DELIVERY CAR cruises down a leafy suburban street as a man in a black overcoat and a red power tie scampers after it, waving a piece of paper. “Trial lawyers used to only chase ambulances,” explains a voice-over. “Now they’re chasing restaurant deliveries to cash in on obesity.”

Even if you haven’t seen this advertisement, you may understand the message. Over the last few years, attorneys have been filing lawsuits on behalf of obese consumers, claiming that restaurants and the food industry should be held legally responsible for making people fat. The crusade seemed legally preposterous back in 2003, when a federal judge dismissed a lawsuit against McDonald’s for its marketing of unhealthy foods and portion sizes. But, earlier this year, a federal appeals court reinstated part of the case, arguing that plaintiffs had the right to examine McDonald’s records for evidence that the company misrepresented the nutritional value of its meals.

Polls suggest that the public is not yet ready to indict Ronald McDonald for the nation’s health problems; in one 2003 survey, nearly 90 percent of respondents said they oppose obesity lawsuits against the food industry. But, with even more litigation in the works, the food industry and its allies aren’t taking any chances. As *The New York Times* reported earlier this month, laws shielding the food industry from lawsuits accusing them of encouraging bad health have passed in 20 states and are under consideration in eleven more. “Those supporting obesity lawsuits are attempting to bypass the legislative process and regulate through litigation,” explains the National Restaurant Association, which is lobbying intensely for these laws. “Congress and the appropriate regulatory bodies are the proper entities for addressing these matters, not judges and lawyers.”

The restaurant group is right, of course: Lawsuits probably aren’t the right response to America’s unhealthy eating habits.

But how about taxes?

Silly though it may sound, there’s a very sensible case for taxing unhealthy food—or, at the very least, two unhealthy substances within food. One is saturated fat, commonly found in beef and dairy products; the other is transfatty acids, or



transfat, which the food industry adds to products during baking or frying. Both substances increase the level of “bad” cholesterol in the blood, which clogs arteries. Transfat seems to be a double whammy: It appears to reduce the level of good cholesterol, which counteracts the effects of bad cholesterol. Scientists agree that anything beyond minimal consumption of either increases the risk of heart attack and other circulatory problems, with no offsetting health benefits, even for otherwise healthy people. Economists agree that the treatment of these conditions—whether through prescription drugs to treat high blood pressure or angioplasty to open up clogged arteries—is very expensive.

The government has already taken some steps to reduce consumption of unhealthy fats—with some success. In 2003, the Food and Drug Administration (FDA) announced it would require food manufacturers to include transfat content on their labels. The industry fought that requirement bitterly. But, with the regulations taking effect next year, manufacturers are busy removing transfat from their products, with companies like Frito-Lay leading the way. The FDA estimated that this change alone could save up to \$3 billion a year, on average, in health care costs over the next two decades.

By contrast, calls to impose taxes on unhealthy foods have raised mostly hackles—or worse. When Dr. Kelly Brownell, director of the Yale Center for Eating and Weight Disorders, introduced the notion in a *Times* op-ed a decade ago, Rush Limbaugh called him part of a “high-fat Gestapo” trying “to force the American people to act in the ‘proper’ way.”

When you put it that way, the idea of a “Twinkie tax,” as it has come to be known, really does sound absurdly paternalistic. If you want to load up on french fries, health risks and all, why is that the government’s business? Unfortunately, fat consumption

really is the government’s business in one, very literal, sense. As taxpayers, we all bear the burden of higher medical costs—either directly, by paying for Medicare and Medicaid, or indirectly, by subsidizing employer-based health insurance (which is tax deductible). So, when some people choose to eat poorly, we all end up bearing the financial burden for their decisions. A Twinkie tax would help rectify this, however modestly. Government wouldn’t be scolding Americans about their choices. It would simply be asking them to confront the costs of those choices—namely, the future medical bills that fatty foods make more likely.

But the link between the Twinkie tax and health care funding must be explicit. Proponents like Brownell usually talk about using the revenue to finance health education campaigns or otherwise improve dietary habits—thus reinforcing the idea that they are, as one *National Review* writer put it, “busybodies pining to police your plate.” Government could instead earmark the funds for programs like Medicaid (or, better yet, universal health insurance), which provide health benefits for the poor and uninsured. Among other things, this would help address a major flaw in the Twinkie tax: its inherently regressive nature, given that poor people spend a larger share of their income on food. (The tax could also exempt milk, which would probably make good medical sense as well, since pediatricians generally recommend that babies consume whole milk, which is high in saturated fat, until the age of two or three.)

Note how linking the Twinkie tax to health care expenditures turns the ideological calculus on its head. The most coherent argument about health care that conservatives make is that insurance, by its very nature, insulates people from medical bills to the point where they have little or no incentive for healthier behavior. Unfortunately, the right’s preferred solution to this problem of “moral hazard” is simply to transfer more medical bills onto individuals—a shift that punishes not only those who have bad habits, but also those who have bad genes or simply bad luck. Taxing unhealthy foods, on the other hand, puts the financial consequences where they belong: On largely voluntary behaviors that lead to higher medical expenses. The Twinkie tax doesn’t reduce personal responsibility, which is the usual complaint you hear about big government. It increases it.

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